

CRIMINAL LAW AND THE RESPONSE TO CATASTROPHE A STATUTORY FRAMEWORK

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Environmental Health & Safety Laws With Criminal Provisions

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- Rivers & Harbors Act of 1899 (Refuse Act)
- **Clean Water Act (CWA)**
- **Oil Pollution Act of 90 (OPA 90)**
- Act to Prevent Pollution from Ships (APPS)
- Safe Drinking Water Act
- Ocean Dumping Act
- Clean Air Act (CAA)
- Resource Conservation and Recovery Act (RCRA)
- Comprehensive Environmental Response, Compensation & Liability Act (CERCLA)

Key Environmental Health & Safety Laws (Cont'd)

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- Federal Insecticide, Fungicide, & Rodenticide Act (FIFRA)
- Emergency Planning & Community Right-To-Know Act (EPCRA)
- Toxic Substances Control Act (TSCA)
- Hazardous Materials Transportation Act
- Hazardous Liquid Pipeline Safety Act
- **Outer Continental Shelf Lands Act**
- Occupational Safety & Health Act
- Federal Mine Safety & Health Act
- **Seaman's Manslaughter Law**
- **Migratory Bird Treaty Act (MBTA)**
- Endangered Species Act (ESA)
- The Marine Mammal Protection Act

OTHER THEORIES OF LIABILITY

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- False Statements (18 U.S.C. § 1001)
- Conspiracy (18 U.S.C. § 371)
- Aiding and Abetting (18 U.S.C. § 2)
- Obstruction of Justice (18 U.S.C. § 1505)
- Destruction, Alteration or Falsification of Records in Federal Investigation & Bankruptcy (18 U.S.C. § 1519)

Why Is This a Criminal Case?

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- Significant Harm
- Culpable Conduct
- Perception that Illegal Conduct is Industry-wide Problem
- Impact on Regulatory Program
- Conflicting stories among company personnel/evasive behavior
- Destruction/Concealment of documents or equipment

Who Can Be Held Criminally Responsible?

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- Corporations & Other Organizations
- Officers & Directors
- Managers
- Employees

Corporate Criminal Responsibility

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A corporation is criminally responsible for the acts of its officers, agents, and employees within the scope of their employment and for the benefit of the corporation.

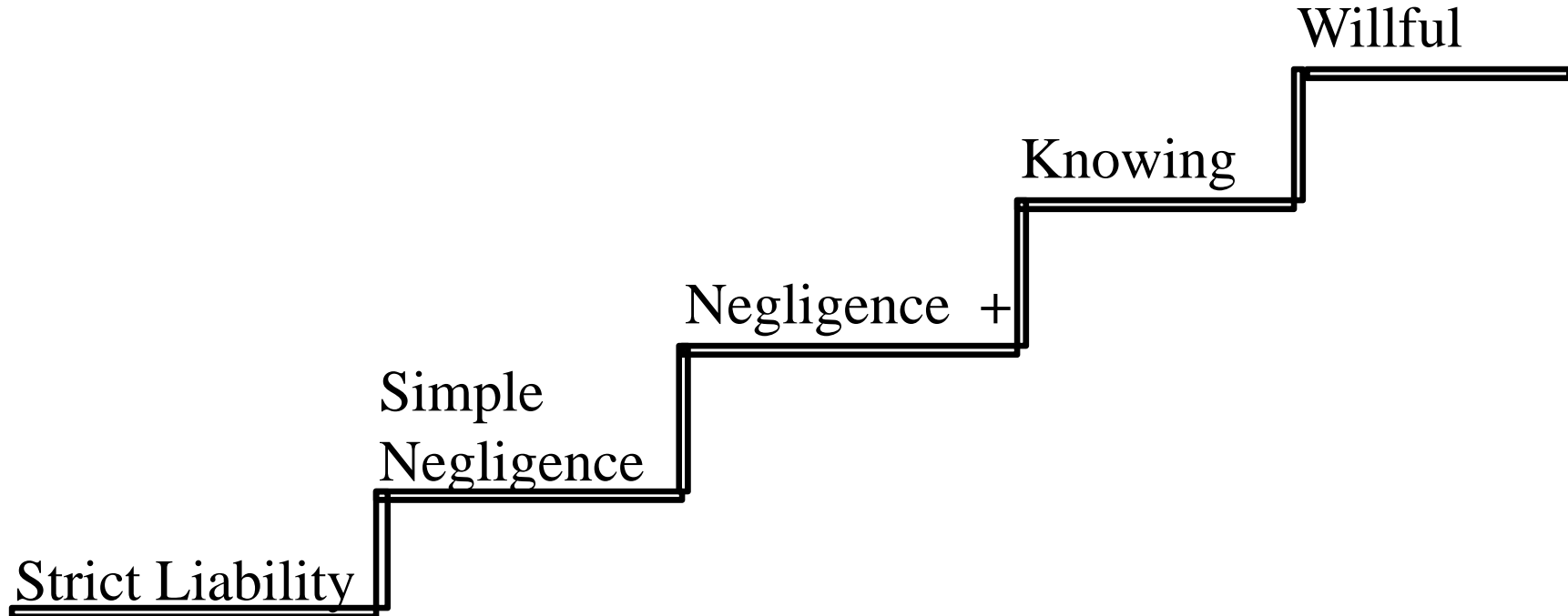
CRIMINAL INTENT

8

Understanding Criminal Intent

Range of Intent Standards

9



STRICT LIABILITY

10

Prohibited Act

=

Criminal Violation

NEGLIGENCE

11

- The ordinary meaning of “negligence” is failure to use such care as a reasonably prudent and careful person would use under similar circumstances.
- In *U.S. v. Hanousek*, the government was required to prove only that Hanousek acted negligently, that is, failed to use reasonable care, in discharging a harmful quantity of oil into a navigable water of the United States.

KNOWINGLY

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An act is done "knowingly" if the defendant realized what he was doing and did not act through ignorance, mistake, or accident.

It is not necessary for the government to prove that the defendants knew that a particular act or failure to act was a violation of law or that the defendants had any specific knowledge of the particular regulatory limits.

WILLFULLY

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The word "willfully" means that the act was committed voluntarily and purposely, with the specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or disregard the law.

CONSCIOUS AVOIDANCE

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(WILLFUL BLINDNESS)

In determining whether the defendant acted knowingly, you may consider whether the defendant **deliberately closed his eyes to what would otherwise have been obvious** to him. If you find beyond a reasonable doubt that the defendant acted with a conscious purpose to avoid learning the truth, then this element may be satisfied.

SEAMAN'S MANSLAUGHTER STATUTE

18 USC § 1115 (a)

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Every captain, engineer, pilot, or other person employed on any steamboat or vessel, *by whose misconduct, negligence, or inattention to his duties on such vessel* the life of any person is destroyed,

Every owner, charterer, inspector, or other public officer, *through whose fraud, neglect, connivance, misconduct, or violation of the law* the life of any person is destroyed, shall be fined under this title or imprisoned not more than ten years, or both.

SEAMAN'S MANSLAUGHTER STATUTE (Cont'd)

18 USC § 1115 (b)

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When the owner or charterer of any steamboat or vessel is a corporation -

Any executive officer of such corporation, for the time being actually charged with the control and management of the operation, equipment, or navigation of such steamboat or vessel, who has *knowingly and willfully caused or allowed such fraud, neglect, connivance, misconduct, or violation of law*, by which the life of any person is destroyed, ...

Outer Continental Shelf Lands Act

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Any person who knowingly and willfully:

(1) Violates any provision of this subchapter, any term of a lease, license, or permit issued pursuant to this subchapter, or *any regulation or order issued under the authority of this subchapter designed to protect health, safety, or the environment or conserve natural resources. ...*

FALSE STATEMENTS

(18 U.S.C. § 1001)

18

To knowingly and willfully

- make a materially false, fictitious, or fraudulent statement or representation;
- conceal or cover up a fact necessary to make a statement true; or
- use a document knowing it to contain a materially false, fictitious, or fraudulent statement or entry.

EXAMPLES OF ENVIRONMENTAL CERTIFICATIONS/STATEMENTS

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- ❑ Clean Water Act Discharge Monitoring Reports
- ❑ Permit Applications
- ❑ EPCRA 311 TRI Report
- ❑ Air Emissions Inventory
- ❑ Facility Security Plan
- ❑ Spill/Emergency Response Plans
- ❑ Operations Manuals
- ❑ RCRA Annual Reports
- ❑ RCRA Manifests
- ❑ CAA Title V Certifications
- ❑ CAA Deviation Reports
- ❑ Annual OSHA VPP Self-Evaluation Reports

Did You Know...

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Documents required to be maintained at a facility by a regulatory statute can be the basis of a false statement case ...

**EVEN IF THE DOCUMENTS ARE NEVER GIVEN
DIRECTLY TO THE GOVERNMENT!**

OBSTRUCTION OF AN AGENCY PROCEEDING

18 U.S.C. § 1505

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Anyone who:

- corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede
- the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States,
- or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress

DESTRUCTION, ALTERATION, OR FALSIFICATION OF RECORDS IN FEDERAL INVESTIGATIONS AND BANKRUPTCY

18 U.S.C. § 1519

22

Any person who knowingly:

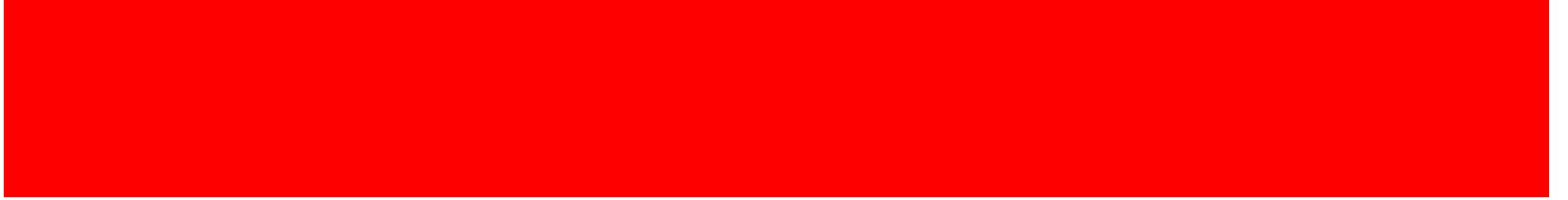
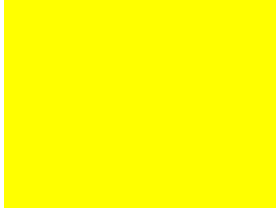
- alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object
- with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11,
- or in relation to or contemplation of any such matter

AIDING & ABETTING

18 U.S.C. § 2

23

- (a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.
- (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.



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